

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT - 6 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

REPLY OF SPRINT

Sprint Corporation hereby replies to the Opposition of Bell Atlantic (parent company of New England Telephone and Telegraph Company ("NET")) to Sprint's Motion to Require Production of Cost Study.

In its Motion, Sprint urged the Commission either to require NET to furnish a copy of the payphone cost study NET submitted to the Massachusetts Department of Public Utilities, or, in the alternative, to disregard the characterizations of that study in the September 9, 1997 Reply Comments of the RBOC/GTE/SNET Payphone Coalition ("RBOCs"), filed on behalf of Bell Atlantic. Sprint's motion was fully consistent with the well-established "best evidence" principle, which holds that a party having possession of an original document cannot be allowed to withhold the document and yet make representations as to its contents.¹ As pointed out in Sprint's motion, NET has publicly

¹ See e.g., Gordon v. United States, 344 U.S. 414, 421, 73 S.Ct. 369, 374 (1953) ("The elementary wisdom of the best evidence rule rests on the fact that the document is a more reliable, more complete and accurate source of information as to its contents and meaning than anyone's description..."). The best evidence rule is codified in the Federal Rules of Evidence (Fed. Rules Evid. Rule 1002, 28 USCA), and has been invoked in past

represented to the Massachusetts DPU that its payphone cost for local calls is \$.167, and if NET or its parent Bell Atlantic wished to either embellish on this representation or attempt to explain it away, or otherwise persuade the Commission not to accept this representation at face value, they must make the underlying cost study available so that all parties have an opportunity to examine it and comment on Bell Atlantic's and the RBOCs' characterization of it.

It borders on the absurd for Bell Atlantic to argue (at 3-4) that Sprint should have sought public disclosure of its cost study from the Massachusetts DPU. Obviously, regardless of the fact that the cost study was prepared for that agency, Bell Atlantic is the possessor of the information and has pointed to nothing in the DPU rules that would preclude it from making this information public if it wished to do so. Having to raise the issue before the DPU, with an inevitable objection from Bell Atlantic to its public disclosure, would be a fruitless exercise.

Second, even accepting at face value Bell Atlantic's representation that the Massachusetts DPU always requires cost studies to be based on incremental costs, it is not enough to argue that the Commission should disregard NET's stated cost of local coin calls simply because the Commission in earlier orders expressed misgivings about the use of incremental costs in determining per-call compensation. Bell Atlantic overlooks two key points. First, the whole question of how to measure the costs of calls for purposes of per-call compensation has been reopened by the Court of Appeals in Illinois Public Telecommunications Association v. FCC, 117 F.3d 555 (D.C. Cir. 1997). As a result, the

Commission proceedings (see Gilbert Broadcasting Corporation, 69 FCC 2d 2067, 2095 (n. 56) (Rev. Board, 1978)).

Commission is free to consider the appropriate cost standard to be employed. By Bell Atlantic's reasoning, the Commission's previous rejection of all approaches to costing other than assuming that the costs of compensable calls are equal to deregulated local coin call rate, would compel it to reach the same judicially reversed result again. Surely that is not the case. Second, the bare term "incremental" does little to illuminate the types of costs Bell Atlantic included in its Massachusetts cost study. It may well be, for example, that the methodology it employed assigns the very types of joint and common costs the exclusion of which gave the Commission concern its brief discussion of incremental costing in previous orders in this docket.

Bell Atlantic further claims (at 6) that its costs and call volumes in Massachusetts are not representative of those in other states. However, in the absence of any underlying facts and data to support these claims, they also must be disregarded.

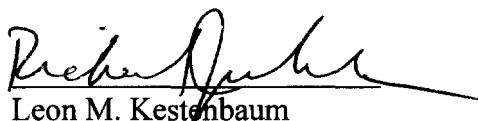
Bell Atlantic also argues (at 7) that its costs are competitively sensitive, particularly the details of its operating expenses such as commissions paid to premises owners. However, a party seeking to require IXCs to collectively make \$1+ billion annually in corporate welfare payments to the payphone industry must be expected to reveal whatever data are necessary to get to the bottom of whether such compensation is justified. In any event, Sprint is not insisting of the disclosure of the cost study. We believe the Commission can take at face value NET's representation to the DPU that its costs in Massachusetts are \$.167, and as discussed in our Reply Comments, appropriate deductions for non-local coin costs can be made from that starting point. See Sprint's Reply Comments at 10-11. However, it is only if the Commission wishes to consider the self-serving and unsupported characterizations of the cost study by the RBOCs and Bell

Atlantic that the best evidence principle applies and production of the study must be required. If the Commission wishes to require production of the cost study, it can make the study subject to an appropriate protective order so that any references to the more detailed cost information have to be submitted under seal. Sprint would be willing to abide by such a process, and that would fully accommodate Bell Atlantic's legitimate interests.

Finally, Bell Atlantic is both irrelevant and wrong in claiming (at 7-8) that Sprint has withheld the actual costs of its own payphone operations. Any failure on Sprint's part to submit its own cost evidence has no bearing on whether Bell Atlantic should be allowed to characterize its own cost study without entering that study into the record. In any event, Bell Atlantic's unexplained and unsupported claims that Sprint failed to submit "complete" studies and intentionally distorted the results are without merit. In fact, Sprint has submitted far more detailed evidence as to the actual costs of the Sprint LEC payphones than Bell Atlantic, or, for that matter, the entire RBOC/GTE/SNET Coalition put together. See Sprint's Reply Comments at 12-13 and Exhibit 1.

Respectfully submitted,

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October 6, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY OF SPRINT** was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 6th day of October, 1997 to the below-listed parties:

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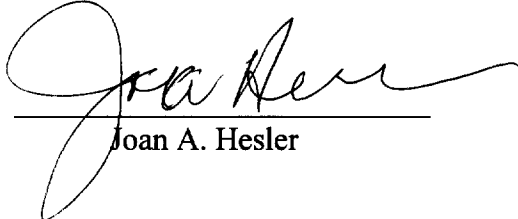
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